BRIEF TO THE

NWT LABOUR STANDARDS LAW REVIEW PANEL

BY
NWT ADVISORY COUNCIL ON THE STATUS OF WOMEN

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1. INTRODUCTION

Thank you for providing the Advisory Council on the Status of Women with an opportunity to present a brief to the Labour Standards Law Review Panel. We would be pleased to appear before the Committee and elaborate on any points raised in this brief, as well as answer any questions which members of the Review Panel might have.

Due to time restrictions, this brief will not cover all issues which are under consideration by the Review Panel. Rather, it will attempt to focus primarily on some issues which are of particular concern to women, such as leave for family responsibilities and pay equity. It will address a number of other issues in less detail as well. The recommendations are summarized at the end for easy reference.

Before discussing specific issues in labour standards legislation and how they affect women, this submission will review women's participation in the NWT labour force.

2. WOMEN AND EMPLOYMENT IN THE NWT

The Advisory Council views the mandate of this Review Panel as extremely significant to women in the NWT. This is because of the high participation rate of women in the labour force, and the high reliance on employment income for the economic well-being of women and their families which this participation rate reflects.

In the winter of 1989 (January - March) the participation rate of women in the labour force was 63%. [1] This is an increase from 60% in late 1984. [2] Men's participation rate in the labour force, on the other hand, did not change between 1984 and 1989 but rather remained stable at 76%. [3] The total increase in labour force participation, from 68% to 70% overall between 1984 and 1989, [4] therefore reflects an increase in participation by women.

The increased participation of women in the labour force in the NWT parallels increases in women's labour force activity in other parts of Canada. All projections of women's labour force activity indicate that this trend will continue in the foreseeable future. We believe it is essential that social and economic policy and legislation adopted by the Government of the NWT be based on a recognition and accurate assessment of women's current and projected involvement in the labour force.

It is also important to bear in mind that these figures tell only part of the story. To be included in the labour force at the time the survey is taken a person must be either "employed" or "unemployed". To be considered "unemployed" a person has to have actively looked for employment in the preceding four weeks and be available for work the week preceding the survey; be on a temporary lay-off; or have a job to start within four weeks. [5] If someone fails to fit in this definition she is not classified as "unemployed" and is not included in the statistics. This statistical method has produced an anomalous situation where the total labour force in 1989 contained approximately 2000 fewer people than actually worked in the NWT in 1988 - (the labour force in early 1989 was 24,250 while 26,216 had actually worked in 1988). [6] Among women the figures were 10,399 and 11,327 respectively. [7] The official labour force size in the NWT obviously reflects a figure that is artificially low.

If all those who wanted a job were included in the labour force statistics, the participation rate would be higher still. In 1989, 4,091 women who wanted a job but did not qualify as "unemployed" were excluded from the total female labour force of 10,399. [8] If they were included, the total would be 14,490 out of a total of 16,437 women aged 15 and over. [9] This shows a participation rate of 88% which is substantially higher than the official rate of 63% and, we would submit, a more accurate reflection of women's interest in paid employment.

In the 1984 labour force survey, those who wanted a job but had not looked for one in the last four weeks were asked why they had not done so. Some 54% stated as their reason that there were no jobs available; 32% were working as homemakers; and 14% were out on the land. [10]The survey does not specify clearly whether the 46% who were occupied as homemakers or on the land would work, if work were available. Presumably their stated desire to work indicates that they would. Among those who wanted to work but were not working and were homemakers, a lack of adequate daycare may have prevented a substantial number from obtaining employment.

It is also important to understand what effect women's child-bearing and family responsibilities have on their participation rate in the labour force. This issue was addressed in the 1986 census and the answer was: surprisingly little. At that time the official participation rate for women 15 years of age and over was 61%. [11] Among women with no children at home, the participation rate rose only 1% to 62%. [12] Among those with some children at home it dropped by only 1% to 60%. [13] The highest participation rate, at 65%, was among women who have children who are all 6 years of age and over. [14] Of women who have children only under 6 years of age 60% participated in the labour force in 1986. [15]

The fact that the labour force particpation rate of women who have children at home is virtually the same as that of women who do not is especially significant in view of the high birth rate in the NWT. In 1985 the NWT birth rate was 28.2 births per 1000 population, or double the national rate of 14.8. [16] Despite the fact that our birth rate is by far the highest in Canada, women are nonetheless continuing to work whenever the availability of jobs and child care allow them to do so. Accordingly it is imperative that social policy be developed in a way that reconciles the conflicts caused by work and family responsibilitites, as this conflict affects so many women.

Like children at home, the presence of a spouse also does not statistically decrease a women's likelihood of participating in the labour force. In 1986, when women's overall participation rate was 62%, the rate among married women was 63% - even higher than the 60% rate for single women. [17] The participation rate among divorced and separated women was substantially higher at 85% and 81% respectively. [18]

Nor do the statistics substantiate the stereotype of women working predominately part-time in order to reconcile work with family responsibilities. There is certainly no question that part-time work is significantly higher among women than men. For example in 1985, 42% of those who worked in the NWT were women. [19] (We are dealing here with statistics about women who actually worked and not with the lower statistics of those women who represented official labour force participation). Nonetheless, among that same sample, 60% of those who worked mostly part-time were women while only 39% of those who worked mostly full-time were women. [20]

This picture of women's part time employment as compared to men's in itself, is only a partial one. Of 11,025 women who worked in 1985, 77% worked predominately full-time. [21] Of the women who did work mostly part-time less than a quarter did so for at least 49 weeks of the year. [22] The remaining three-quarters worked for shorter periods of time. We cannot assume that this was based on their preference. Many may have prefered to work full-time if work were available. While the interests of part-time workers must be protected, social policy should not be developed on the presumption that this is the preferred option of substantial numbers of women.

Women also do significantly different types of work than men. In 1986, 90% of women working in the NWT were classified in seven job categories (clerical, services, administrative and managerial, teaching, health care, sales and social services). Conversely only 40% of men were employed in those fields. [23]

Despite a public image of women entering non-traditional fields, job ghettoization has in fact remained remarkably stable for the vast majority of working women. With some exceptions, women tend to do different types of work than men. It is imperative that social policy recognize this fact and not allow women to be penalized economically for being secretaries rather than truck drivers or working in a day care centre rather than a mine.

This is in fact the situation at present. The average female salary in 1985 was 64% of the average male salary. [24] Among those who worked full-time for the full year however, the comparison was better. Here women earned an average of 73% of men's salaries .[25] However women were much less likely than men to work a full year on a full time basis. Only 40% of women who worked the full year did so full time. [26] The comparable figure for men was 51%. [27]

These figures do show an improvement over the 1980 statistics, however, where women on average earned only 59% of what men earned. [28] They are also better than the statistics for Canada generally where women in 1985 earned an average of only 56% of what men earned from employment. [29]

These figures also demonstrate clearly that women's work in the NWT is based on economic necessity, and not personal fulfillment or interest or other reasons that have somtimes been advanced to explain women's labour force activity. Women almost always work either because they are the sole support of themselves and their families or because the second income keeps their family above the poverty level. In 1986 the average income for two parent families was $43,456, while male-led families averaged $26,222 and female-led families averaged $20,447. [30] The overall average for all families was $39,972. [31] In two parent families, if one spouse worked, the average family income was $36,427. [32] If both spouses worked, the family income rose to an average of $56,916. [33] Particualrly in view of the high cost of living in the NWT, there are compelling financial reasons that cause women to work.

In view of this information, we recommend that the development of policy and legislation in the field of employment standards be based on the following presumptions.

1. **The participation rate of women in the labour force in the NWT is high.**
2. **The participation rate of women in the labour force in the NWT is increasing steadily, and will continue to increase steadily.**
3. **The participation rate of women with children at home is as high as the participation rate of women without children at home.**
4. **Part-time workers are primarily women and are entitled to the same rights and benefits as full-time workers.**
5. **Part-time work is not the option of choice for most women, including married women.**
6. **The majority of women tend to work in different types of jobs than the majority of men, and this difference can be expected to remain stable.**
7. **Women earn significantly less than men, even when in the same field, and particularly when comparisons are made across job categories.**
8. **Women work out of economic necessity to support themselves and their families and not necessarily for reasons of personal fulfillment.**

3. THE SCOPE OF THE LEGISLATION

The objective of employment standards legislation is to protect employees by setting minimum standards for wages and working conditions by which all employers must abide. In order to obtain this objective, the legislation must cover all those in an employer-employee relationship.

At present, the Labour Standards Act applies to only a small percentage of employees in the NWT. All employees of the GNWT are excluded, as are employees of hamlets, hospitals, and Boards of Education. Only employees in an "industrial establishment" are covered. [34] Although many employees who are excluded from the Act are covered by collective agreements containing more favorable terms this still begs the question of the desirability of minimal standards which apply across the board.

We recommend that the new employment standards legislation apply to all those in an employer-employee relationship and not just those working in industrial establishments.

Notwithstanding the generality of the above statement, the Advisory Council has specific concerns about the applicability of the legislation to three specific groups: domestic workers, part-time workers and contract workers.

Domestic Workers

We have no statistics on the number of domestic workers in the NWT, but acknowledges that the group is not large. Nor do we have any statistical data on the wages or working conditions of these employees in the NWT. In other jurisdictions where such data are available, however, it is known that the wages and working conditions of these employees, who are almost all women, are the poorest in the labour force.

The Labour Standards Act authorizes the regulation of the wages and working conditions of these employees. [35] To date, no such regulations have been passed.

If the purpose of employment standards legislation is to set minimum standards which are applicable to all workers, it is especially important that this legislation apply to women whose work has been documented to have the poorest wages and working conditions. Moreover, to enact special regulations for these workers which are less favourable than the minimum standards set for other workers is in our view clearly discriminatory against women.

In 1985 the Charter of Rights and Freedoms was enacted. It clearly prohibits discrimination on the basis of sex. [36] Any law that discriminates against women or any of the other specified groups is "of no force and effect", unless it is stated that the law is to be in effect notwithstanding the Charter. [37] Regulations or legislation which provided for lower standards for domestic workers would clearly invite litigation under the Charter. Given this factor, we would submit that no such legislation should be passed unless there are compelling public policy reasons for doing so. In this instance we would further submit that no such public policy reasons exist.

We therefore recommend that labour standards legislation be amended to provide that the same minimal standards that apply to other workers apply to domestic workers as well. Specifically we recommend that the provisions on hours of work and minimum wage apply to domestic workers, as well as other minimum standards such as notice of termination and vacation pay.

Part-time Workers

As the labour force statistics indicate, part-time workers are primarily women. Part-time workers are frequently excluded from collective agreements and are thus not entitled to the same rates of pay and benefits as full-time workers. As well, a regulation was passed only this year under the Labour Standards Act excluding part-time workers from the notice of termination provisions of the Act. [38] It is unclear what policy is being implemented in this exclusion which we view as discriminatory.

Part-time work is a method used by some women to reconcile work and family responsibilities. In other instances, it is a result of a lack of full-time job opportunities. Whatever the reason, women should not be penalized economically for the fact that they work part-time.

We recommend that all the protections afforded employees under employment standards legislation apply to part-time workers. We also recommend that all employers be required to pay, on a pro-rated basis, the same wages and benefits to part-time employees that are paid to full-time employees in equivalent job classifications.

Contract Workers

A considerable amount of work is done in the NWT on a "contract" basis. This arrangement relieves the person or company offering the contract of responsibility to provide working space or equipment, and also to pay minimum wage, unemployment insurance premiums, worker's compensation fees, pension deductions or vacation pay, among other things. This is because these relationships are not viewed as employer-employee relationships.

In many instances this arrangement is satisfactory to both parties and genuinely reflects a contract between an individual offering personal or professional services for a fee and another person or company purchasing those services. In other situations, however, it can be used by a person who is in reality an employer to avoid the legal responsibilities of an employer.

To remedy this latter situation, we recommend that a procedure be developed whereby an individual worker can seek a binding determination of whether his or her contract is in reality a contract of employment and as such subject to the employment standards legislation. This would be analogous to the power under the Unemployment Insurance Act to make rulings about whether a person's work is insurable employment and as such is covered by the Act.

4. LEAVE FOR HEALTH AND FAMILY REASONS

At present, our labour standards legislation authorizes only three types of leave: maternity leave, annual vacation leave, and certain statutory holidays. [39] The latter two are paid leave, while maternity leave is unpaid. There is no legal requirement that employers give employees either paid or unpaid sick leave, or time off work in order to meet family responsibilities. In view of the large number of women with children in the labour force, the high birth rate in the NWT and the fact that child care is still primarily the responsibility of women, this is a serious gap.

In 1985, the GNWT adopted Equality for Women: A Five Year Plan of Action, 1985-1989. This report recommended that women be guaranteed the right to maternity leave, and that parental leave be examined and, if appropriate, amendments be made to labour standards legislation. [40] Maternity leave was legislated in 1988, but no action has been taken on parental leave. In the Progress Report to March 1989, it is reported that parental leave was studied, and that action was recommended only on maternity leave. [41] No reason was given for the decision not to proceed with parental leave.

Leave for family responsibilities is a relatively new concept, not just in the NWT, but in Canada generally. Historically work and family responsibilities were kept separate from each other by virtue of the fact that they were generally divided between spouses. The husband and father engaged in paid employment, while the wife and mother assumed the primary responsibility for housework and raising children.

As our examination of labour force statistics indicates, that picture does not accurately reflect the lives of the majority of families in the NWT today. Now both parents usually want to work, and have to do so to support their families. All forecasts of future labour force activity indicate that this trend will continue and even increase. Working mothers are the reality of the present and also the future. They are the norm, and not the exception.

Given that women work out of economic necessity, their participation in the labour force can only be viewed as desirable. Another way of saying this is to say that the economy of Canada need women employees as much as women need jobs. Policy and legislation must be developed with this view in mind.

To date, this has not been done. There has been no recognition of the fact that working mothers experience different stresses and responsibilities than other members of the paid labour force. Nor has there been any recognition that this conflict is a social issue which requires social solutions. Rather, the responsibility for reconciling conflicting work and family responsibilities has been left to the individual woman and whatever resources she can muster. This is despite the fact that the conflicts have been known to cause poor morale, burnout, absenteeism and turnover among some women - obvious problems which can affect the employer and workplace as well as the individual woman.

We view the adoption of different types of leave to allow for family responsibilities as a priority. The responsibility for the care of children and other family members, while vested primarily in the family, is one that society as a whole ought to share. Developing policy and legislation which provide for harmonizing work and family responsibilities should be a top priority.

It should be noted that there are considerable benefits which result from reducing the conflicts between work and family responsibilities which working mothers experience. Obviously it is better for the women and their families. Less obviously, it is also beneficial to the employer as it can reduce work-related stresses in working mothers, and thus create more job satisfaction and less turnover. Low turnover and high employee morale are factors which operate to the direct advantage of the employer both financially and in terms of workplace productivity and efficiency. Dissatisfied, over-stressed employees no matter how conscientious and committed to their work, can never function as effectively as others not operating under this stress. The economic benefit to the employer also has a spin-off effect on the economy as a whole.

Labour standards legislation is an effective means of providing minimum protections designed to reduce the conflict between work and family responsibilities. [42]

The question of leave for family responsibilities involves a number of different issues.

1. What types of leave should be available?
2. Who should qualify for such leave and on what conditions?
3. What should the duration of such leave be?
4. Should the leave be paid or unpaid?
5. If the leave is paid, should this responsibility fall on the employer or on an independent funding source such as unemployment insurance?

There are at present no provisions in employment standards legislation in Canada requiring employers to give employees paid leave for family responsibilities. They are, however, included in a number of collective agreements including those of the GNWT. Having such provisions enacted in employment standards legislation in the NWT may not be feasible at the present time. It is feasible, however, to have provisions for unpaid leave included. It is also feasible to have provisions which are at least sufficient to allow all employees time off to collect whatever benefits they may be entitled to under unemployment insurance legislation.

Not only is such unpaid leave feasible, it is an essential minimum to enable women in particular, who still bear most of the responsibility for child care, to participate equally in the economy. As Monica Townson, an expert on this issue, points out,

> "Statutory leave provisions, with job protection and other guarantees are, of course, a necessary first step in preventing discrimination against women on the grounds of marriage or maternity and in ensuring their right to work." [43]

It should be noted that, even with its unemployment insurance benefits, Canada falls far behind the vast majority of European countries in its maternity leave provisions. In a study prepared for the Task Force on Child Care in 1984, Monica Townson ranked Canada 22nd out of 23 countries in the provision of maternity benefits. [44]

The vast majority of the European countries with which Canada was compared are much poorer than Canada, including Spain, Ireland, Portugal, Yugoslavia and Hungary. In Europe it has long been recognized that women's employment is socially and economically desirable, and the stresses that family and work conflicts generate are something that society as a whole has a responsibility to address.

Maternity benefits at 100% of earnings are available in ten European countries, including Yugoslavia, Norway, Hungary, Portugal, the Netherlands and East and West Germany. The length of the benefit period varies from 12 weeks to 8 1/2 months. [45] In Sweden, maternity benefits are available for 9 months at 90% of earnings. [46]

It is also important that leave provisions for family responsibilities recognize that these responsibilities ought not to be carried only by women, and that the leave (with the exception of maternity and paternity benefits) be available equally to men and women.

We recommend that employment standards legislation be enacted to strengthen maternity leave and also to require employers to grant unpaid leave for paternity, parenting, adoption, family responsibilities and sickness. Each of these types of leave will be examined separately below.

Maternity Leave

In 1988, the NWT became the last jurisdiction in Canada to include maternity leave provisions in its labour standards legislation.

Maternity leave (as opposed to parental leave) is designed to allow the mother time off work to give birth and recuperate from the delivery.

Under the Unemployment Insurance Act, a woman who has worked 20 weeks in the year before she applies for benefits is entitled to 15 weeks benefits after serving a two week waiting period. [47] However, to qualify for maternity leave under the current Labour Standards Regulations, a woman needs to have worked one continuous year for the same employer. [48] This creates an anomalous situation where a woman may be eligible for benefits but may risk losing her job in order to collect them, because her rights under labour standards legislation are less than her rights under umemployment insurance law.

There is no clear rationale for the requirement that a woman have worked any specified leave of time (let alone a year) in order to qualify for maternity leave. Nor is it clear what public interest is being protected by this requirement. Although a number of jurisdictions have this requirement, two provinces (British Columbia [49] and New Brunswick [50]) have eliminated it completely.

It is recommended that the NWT follow their example and eliminate this requirement entirely, on the grounds that it is an unwarranted infringement of a woman's right to maternity benefits and as such against public policy.

It is also recommended that the length of leave to be taken be at the woman's discretion, up to a legislated maximum, rather than a flat period of time. At present, a woman who wishes to take fewer than 20 weeks maternity leave can do so only with the consent of her employer, despite the fact that unemployment insurance is available for only 15 weeks. [51] Many women may prefer to return to work after 17 weeks or less, and should be able to do so. Maternity leave must be treated as a right the employee is entitled to take, and not justification for the employer to exclude her from work.

A further problem exists with the enforcement section. Here a woman who files a successful complaint about a breach of her rights to maternity benefits can be ordered re-instated in her old job or, at the discretion of the Labour Standards Officer, awarded compensation. [52] No guidelines are given as to the calculation of this compensation or the circumstances which might warrant compensation rather than re-instatement. In most circumstances we would suggest that an employee would want her job back. Should she wish it, she should be entitled to re-instatement. Accordingly.... **it is recommended that the penalty provision for employer non-compliance be amended to allow the payment of compensation to an employee only with the consent of the employee involved.** In all circumstances the employee should have an absolute right to be re-instated in her old job or a comparable one and also be paid lost wages, should she request it.

Furthermore, the entitlement to leave without having worked a specified period of time should apply to all types of leave for family or health reasons. The right to re-instatement and payment of lost wages should also apply to all these types of leave, and not just maternity leave.

Paternity Leave

Paternity leave is leave granted to a father to allow him to be present at the birth of his child and sometimes for a brief period afterwards. It can include allowing him time off to help his wife and child during the first few days at home following delivery.

Paternity leave facilitates bonding between a father and a newborn infant. It can also relieve a new mother of some of the child care responsibilities while she is recuperating from the delivery. As such it benefits the entire family.

The Saskatchewan Labour Standards Act provides for up to six weeks unpaid paternity leave. [53] A number of public service acts (including the NWT's) provide for one day paid leave. Quebec's public service legislation provides for five days paid leave.

In view of the travel that is involved in births for the majority of parents in the NWT who do not live in a community with a hospital, it is submitted that up to six weeks unpaid paternity leave is appropriate in the NWT.

Parental Leave

Parental leave is leave available to either or both parents following the birth of a child. It is intended to facilitate bonding between parents and children. It is a type of leave that is in addition to maternity and paternity leave already described. It can be taken by either parent or split between the two parents.

Under the Canada Labour Code, which covers employees under federal jurisdiction (eg banks, airlines, railway companies) parents are entitled to 24 weeks parental leave. [54] This leave may be taken by either parent or split between them. If both parents want to take parental leave the combined total cannot exceed 24 weeks.

Saskatchewan also provides six weeks of unpaid parental leave which can be taken by either parent in its labour standards legislation. [55]

Employees of the federal government are entitled to six months unpaid parental leave. As well, they can obtain a further unpaid leave of up to five years in order to care for a pre-school child under their collective agreement.

It is recommended that a total of 26 weeks parental leave, in addition to maternity and paternity leave, be available as a right to parents of newborn children. It can be taken by either parent or split between them. It should be available to both mothers and fathers as child care ought to be a family responsibility and bonding with a new born infant is important for both mothers and fathers (and, most importantly, for the child).

It should be available at any time during the child's first year of life, in order to conform with unemployment insurance legislation currently before Parliament allowing ten weeks parental benefits at any time during the first year of the child's life. [56]

Adoption Leave

Under the Unemployment Insurance Act, parents who adopt a child are entitled to 15 weeks adoption benefits (after an initial two-week waiting period) if they have worked 20 weeks in the year before leave is to start. [57] This leave can be taken entirely by the adopting mother or the adopting father or split between both parents.

Under legislation which is currently before Parliament, unemployment insurance adoption benefits of 15 weeks will be replaced with parental benefits, which can be taken at any time during the child's first year of life. [58] However, these parental benefits are for ten weeks only. [59] The effect of this amendment on adoptive parents will be to reduce their entitlement to benefits from 15 weeks adoption benefits to ten weeks parental benefits.

At present, only five provinces recognize the right to adoption benefits by granting adopting parents a right to adoption leave. [60] Under the Canada Labour Code, the 24 weeks parental leave can be taken with respect to both biological and adopted children. [61]

The incidence of adoption is much higher in the NWT than it is in most Canadian jurisdictions. Legally in the NWT, there are three methods of adoption: native custom, private, and departmental adoptions. Most are done through custom. A smaller number are done privately. Very few are done through the Department of Social Services.

Because adoption is so much more prevalent here than in the south, it is even more important that adoption leave be recognized here. It is important that any adoption leave granted here apply to all three types of adoptions, and not just departmental adoptions.

There are two reasons for this. First, the rationale for adoption leave remains the same whatever method of adoption is used. Secondly, to allow adoption leave for some of these adoptions but not others when all three are recognized by the courts, is arguably discriminatory.

One further characteristic differentiates a substantial number of NWT adoptions from adoptions in the south. Here, the adoptions are usually arranged privately between the biological mother and the adopting parents before the birth of the child. It is not at all unusual for one of the adopting parents to accompany the biological mother to the hospital and assist in both the delivery and the care of the newborn. It is submitted that this is a practice that is beneficial to the adopting parents and child and, as such, should be encouraged and validated through policy and legislation.

In order to achieve these goals, we recommend that paternity leave be available to an adopting parent, either male or female; and that parental leave be available to adoptive parents on the same basis that is available to biological parents.

Leave for Family Responsibilities

Parents of children often have to take time off work in order to care for a sick child; to attend meetings at the child's school or day care centre; or for medical or dental appointments. Employees also sometimes need time off work to care for dependent elders or disabled relatives.

There is at present no provision in any labour standards legislation in Canada authorizing either paid or unpaid leave in any of these circumstances. However, if employees with families are to reconcile work and family responsibilities, such leave is essential. Such leave, like maternity benefits, is much more easily come by in most European countries than it is in Canada.

There are a number of different ways such leave could work. One way is to allow every parent, for example, one half or one day per month cumulative leave time for family responsibilities, up to a specified maximum. This approach, however makes no allowance for leave to care for dependent adults. It also does not take into account the travel time that can be associated with healthcare. It is important that any leave provisions take into account the realities of health care delivery in the NWT.

Some public service acts and collective agreements that allow leave for family responsibilities allow it to be taken only up to two days at a time. This approach is defended on the basis of a lower cost to employers (not having to replace an employee for such a short period of time, while it might be necessary if the employee were absent for a longer period of time.) However, this approach would be particularly unsuitable in the north because of the travel frequently associated with health care.

A preferable approach would be to authorize employees up to four weeks unpaid leave per year in order to attend family responsibilities with no restrictions on how that leave can be taken.

Sick Leave

Most employees view the right to paid sick leave as a given. Ironically, however, there are very few labour standards provisions in Canada which require employers to provide even unpaid sick leave let alone sickness benefits. The Canada Labour Code provides for up to 12 weeks unpaid sick leave. [62]

Under the Unemployment Insurance Act an employee who has worked 20 weeks is entitled to up to 15 weeks sickness benefits after serving a two week waiting period. [63] If the employee is unavailable for work as a result of injury or illness suffered on the job, workers' compensation benefits can be provided.

We recommend that employees be guaranteed a minimum of 17 weeks unpaid sick leave without loss of seniority or benefits on return to work. Medical documentation would be required. This would allow an employee who is sick to claim the maximum sickness benefits to which she is entitled under the Unemployment Insurance Act.

5. HOURS OF WORK

For women with small children, the hours of work involved in full-time employment can create considerable difficulties in reconciling work and family responsibilities. The logistics of shuffling children to and from day care, and of getting to and leaving work on time are in themselves the source of considerable stress.

Pro-rating benefits for part-time workers in order to ensure that they are paid fairly for their work is one thing that can ease this stress. Three other solutions involve a shortened work week; flexible working hours; and job-sharing. We urge the panel to consider ways that employment standards legislation can be used to encourage employers to develop policies and programs in this area. The rationale behind the development of such policies and programs is the same as the rationale for leave for family responsibilities. It alleviates the stress caused by the conflict between work and family responsibilities. In doing so it generates benefits for the employee and her family and also for the employer and society as a whole.

Reduced Working Hours

At present, the normal working week (after which overtime must be paid) is eight hours a day and 40 hours a week. [64] **We urge the Review Panel to consider a normal working week of 35 hours, or 7 hours a day.** This could help to alleviate stress among working parents by giving one extra hour per day to family life.

Flexible Work Hours

At present the standard work week can sometimes be varied, at the option of the employer. The employer can apply to the Labour Standards Officer for a permit to allow him to operate his business using different working hours and may do so if granted the permit. [65]

Flexible work hours at the option of the employee could in some situations go a long way to reducing the conflict between work and family responsibilities experienced by working parents. However, flexible working hours at the option of the employee are far from the norm in Canada: in fact they are quite rare. They are not required in any existing labour standards legislation. This raises the question of why they happen so seldom. Although it seems more convenient to employers to have all employees work the same hours, it is not in most instances necessary in order to run a business efficiently. Indeed it is arguable that the increased job satisfaction that flexible working hours could generate could actually cause the workplace to run more efficiently.

We recommend that employment standards legislation provide employees with the opportunity to apply for a permit to allow them to work flexible hours. This would be analogous to the permits currently being issued which allow certain employers to schedule their work on a basis other than eight hours a day and 40 hours a week.

Job Sharing

Job sharing is another method which can be used by parents to ease work and family responsibilities. In this situation, two individuals (not necessary spouses) would split one job between them. In effect, one full-time job is divided into two half-time jobs.

Historically, job-sharing has tended to occur mostly in professional occupations (such as university professors). However, there is no theoretical or even practical reason why the same thing could not occur in other types of occupations. A statutory requirement that part time workers be paid, on a pro-rated basis, the same salary and benefits, could itself act to encourage job sharing by removing the current economic disincentive to workers to consider part-time work.

We recommend that employment standards legislation require employers to consider applications to job-share employment openings on the same basis as applications from individuals.

6. PAY EQUITY

The NWT has had a legal requirement that employers pay all employees, regardless of sex, marital status, race or certain other characteristics, equal pay for equal work. This was first enacted in the Fair Practices Act in 1966. [66] In that act, equal work was described as work that involved the same duties or services as another job. In 1974, this was amended to require equal pay for work that is the same as or substantially similar to other work. [67]

Equal pay for work of equal value, on the other hand, requires employers to pay employees the same amount if their work involves similar levels of skill, effort and responsibility and similar working conditions. In other words, it requires that comparisons be made between different job classifications. Given the previously noted job ghettoization between men and women, equal pay for work of equal value is the only scheme that can ensure women are paid adequately for work that is not done by men. The ongoing discrepancy between men's and women's wages is proof in itself that equal pay for equal work is not sufficient to produce pay equity between men and women.

There is substantial historical recognition on the part of the Canadian Government that equal pay for equal work will not result in women achieving economic equality in the workplace. [68]

In 1976, Canada adopted the United Nations International Covenant on Economic, Social and Cultural Rights. It requires that employers pay employees "fair wages and equal remuneration for work of equal value without distinction of any kind." [69]

Canada also ratified, in 1981, the United Nations Convention on the Elimination of all Forms of Discrimination against Women. This Convention obligates signatories "to take all appropriate measures to eliminate discrimination against women in the field of employment, in order to ensure, on a basis of equality of men and women, the same rights, in particular....the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value." [70]

In 1985, the Government of the NWT adopted Equality for Women: A Five Year Plan of Action 1985-89. In this Report, the GNWT adopted a policy supporting international conventions in the elimination of all forms of discrimination against women to which Canada is a party. In doing so, the GNWT approved in principle the concept of equal pay for work of equal value. [71]

We therefore recommend that new employment standards legislation include a requirement that employers pay all employees on the basis of equal pay for work of equal value.

At least as important as legislating equal pay for work of equal value, however, is the need for a pro-active mechanism to ensure that such a system actually comes into reality. All research to date has indicated clearly that enforcement mechanisms which rely on individual employees (or even their unions) filing complaints about a lack of equal pay are doomed to failure. Employees as a group simply do not have the resources or the information necessary to prove that they are not being paid equal pay for work of equal value.

This is particularly true of unorganized employees who do not have a union to file a complaint on their behalf.

Nor should the responsibility for establishing this have to lie with the individual employee. What the concept of equal pay for work of equal value is attempting to counter is systemic rather than individualized discrimination. Given that the discrimination itself is systemic, so too must be the responsibility for ameliorating it.

In 1977, Quebec introduced the concept of equal pay for work of equal value in its Charter of Human Rights and Freedoms.[72] In 1978, Canada introduced the same concept in the Canadian Human Rights Act.[73] In both jurisdictions these provisions have been used, and generated some awards in favour of women employees. However, there have not been a large number of cases, and the awards generated from them have not been sufficient to narrow the wage gap between men and women in these two jurisdictions. This in itself demonstrates clearly the inadequacy of an enforcement mechanism which is complaint-based.

These results have generated demands from women's groups for a more pro-active approach to the problem of enforcing equal pay for work of equal value. In the late 1980s, a number of Canadian jurisdictions began to legislate a pro-active approach to equal pay for work of equal value as it related to its public servants. At present, most Canadian federal, provincial and territorial governments (including the GNWT) are in the process of implementing or at least examining equal pay for work of equal value for their public servants, on a pro-active basis.

The logical extension of this is the requirement that a pro-active enforcement mechanism for equal pay for work of equal value apply to employees in the private as well as the public sector. In 1987, Ontario passed the Pay Equity Act, which came into effect on January 1, 1988. It covers all public and private sector employers with more than ten employees.[74] It requires all public sector employers and all private sector employers with more than 500 employees to have pay equity plans in place by January 1, 1990.[75]

Smaller employers are phased in at a later date. In unionized workplaces the union is involved in negotiating the plan. The Act establishes a Pay Equity Commission to resolve disputes about the adequacy of the pay equity plan devised by the employer. An individual employee can file a complaint with the Commission, which then makes a decision on the complaint. [76]

We recommend that the NWT adopt the approach taken in Ontario's Pay Equity Act, with a pro-active enforcement mechanism which is applicable to all public sector employers and all private sector employers with ten or more employees.

7. OTHER PROVISIONS

Minimum Wage

The current minimum wage in the NWT is $5.00 an hour. It is almost four years since it was increased. [77]

Minimum wage is an important issue for women in the NWT because women are more likely than men to be paid wages at or only marginally above minimum wage.

Given the high cost of living in the NWT, a minimum wage of $5.00 an hour is grossly inadequate. **The minimum wage should be increased immediately to a more realistic figure, such as $6.00.**

Automatic annual increases in the minimum wage should be pegged to the cost of living, so that another four years does not pass before the minimum wage is once again raised.

Enforcement

A number of specific enforcement recommendations have been made throughout this brief, such as establishing an Pay Equity Commission and giving the labour standards officer certain powers to deal with complaints.

Rather than re-iterate these recommendations here, we wish to stress the necessity of developing an enforcement mechanism which is accessible to people outside Yellowknife. Without easy, accessible enforcement mechanisms, the best provisions on substantive rights remain moot.

One possible way of doing this is to have local justices of the peace appointed as Labour Standards officers and given all the powers of a Labour Standards officer under the current legislation. This would maintain the authority of the labour standards officer and Board while ensuring those powers are more accessible at a local level. It would also retain the advantages of the current Wages Recovery Act while keeping these powers in one statute. [78]

Public Education

Finally, we would like to stress the importance of informing people across the NWT about whatever rights are enacted in the new legislation. It is our view that the vast majority of NWT residents are currently unaware of what rights they have and how they can go about accessing them. If rights without enforcement are meaningless, having the power to access rights but lacking the knowledge that you can do so is also meaningless. **We recommend that, whatever amendments to the legislation are made, a broad based, multi-lingual public awareness campaign be undertaken to inform the public of them.**

8. SUMMARY OF RECOMMENDATIONS

THE SCOPE OF THE LEGISLATION

1. The new employment standards legislation should set minimum standards for all employees, not just those in industrial establishments.

2. The same minimum standards including minimum wage and hours of work that apply to all employees under the employment standards legislation should apply to domestic workers.

3. The same minimum standards, including notice provisions, that apply to all workers should apply to part-time workers.

4. Employers should be required to pay part-time workers, on a pro-rated basis, the same wages and benefits that they pay full-time workers in equivalent job classifications.

5. There should be a procedure in the legislation whereby the labour standards officer can rule on whether a contract involves an employer-employee relationship which would then come under the Act.

LEAVE FOR FAMILY AND HEALTH REASONS

6. The requirement that a woman must have worked one year for the same employer to qualify for maternity benefits should be eliminated.

7. There should be no requirement that an employee work a specified period of time to qualify for any unpaid leave.

8. The length of maternity leave should be at the discretion of the mother (and not the employer), up to a specified maximum.

9. An employee should have an absolute right to be re-instated and paid lost wages if she so wishes for any infringement of her rights under employment standards legislation, and the power to compensate an employee should only be possible on the consent of the employee involved.

10. Fathers should be allowed up to six weeks paternity leave on the birth of a child.

11. Parents should be allowed up to 26 weeks parental leave at any time within the first year of a child's life. It could be taken by either parent or split between them.

12. An adoptive parent, either male or female, should be entitled up to six weeks unpaid paternity leave.

13. Adopting parents should be entitled to up to 26 unpaid parental leave at any time within the first year of the child's life.

14. Employees should be entitled to up to four weeks unpaid leave per year for family responsibilities.

15. An employee should be entitled to up to 17 weeks unpaid sickness leave per year.

HOURS OF WORK

16. The normal work week should be 35 hours a week and seven hours a day.

17. An employee should have the right to apply to the labour standards officer for flexible working hours, a right currently enjoyed by employers only.

18. Employers should be required to consider applications for job-sharing on the same basis as individual employment applications.

PAY EQUITY

19. The legislation should require that all employers pay their employees on the basis of equal pay for work of equal value.

20. The government should establish a pay equity commission requiring all public employers and all private employers with more than ten employees to develop pay equity plans within a specified period of time.

21. An employee who feels she is not being paid equal pay for work of equal value should be able to bring her complaint to the Pay Equity Commission, and have a decision made on her complaint.

OTHER PROVISIONS

22. The minimum wage should be increased to $6.00 an hour, effective immediately.

23. The minimum wage should be pegged to the consumer price index and increased automatically once a year.

24. Enforcement mechanisms under new legislation should be accessible geographically, linguistically and procedurally.

25. A public education program should be undertaken to inform people of their rights under the new legislation and how they can go about accessing them.

FOOTNOTES

1. 1989 NWT Labour Force Survey, GNWT Bureau of Statistics, June 1989 Report No. 1, Table 2

2. 1984 NWT Labour Force Strategy, GNWT Bureau of Statistics, Preliminary Report, April 1, 1985

3. 1985 NWT Labour Force Survey, Report No.1, Table 8

4. ibid., Table 6

5. ibid., Definitions. p. 5

6. ibid., Table 2

7. ibid., Table 2

8. ibid., Table 2

9. ibid., Table 2

10. 1984 Labour Force Survey, p. 1

11. 1986 Census of Canada, NWT, GNWT Bureau of Statistics. Table LF86B08

12. ibid.

13. ibid.

14. ibid.

15. ibid.

16. Vital Statistics Quarterly , 1985 Statistics Canada Report 84-001

17. 1986 Census of Canada, Table LF86B02

18. ibid.

19. ibid., Table LF86B07

20. ibid.

21. ibid.

22. ibid.

23. ibid., Table LF86B04

24. ibid., Table IN86BO1A

25. ibid.

26. ibid., Table LF86BO7

27. ibid.

28. 1986 Census Tables on Place of Birth, Language, Income and Housing, GNWT Bureau of Statistics, May 10, 1988

29. ibid.

30. 1986 Census of Canada: NWT, Table IN86BO1B

31. ibid.

32. ibid.

33. ibid.

34. Labour Standards Act, RSNWT 1974, c. L-1, s. 3

35. ibid., ss. 3(d), 12.1, 16(h)

36. Charter of Rights and Freedoms, 1982 ss. 15 and 28

37. ibid., s.1

38. Notice of Termination Exemptions Regulations, R-012-89. s.2(d)

39. Labour Standards Act, RSNWT 1974, c. L-1 Part III, Annual Vacations; Part IV, General Holidays; and Part IV.I., Maternity Leave

40. Equality for Women: A Five Year Action Plan, 1985-89, p.18

41. Equality for Women: A Five Year Action Plan, 1985-89 Progress Report to March 1989, p. 12-13

42. For a more detailed discussion of the rationale behind leave for family responsibilities, see Monica Townson, Leave for Employees with Family Responsibilities, Labour Canada, Women's Bureau, 1988; and Equality in the Workplace a National System of Fully Paid Parental Leave for Canada: Policy Choices Costs and Funding Mechanisms, Labour Canada, Women's Bureau, 1983

43. Monica Townson. Paid Parental Leave Policies: An International Comparision, with Options for Canada: Study Prepared for the Task Force on Child Care, November 1984, p.3

44. ibid., p.11

45., ibid., p.11

46. ibid., p.11

47. Unemployment Insurance Act, R5C 1985, c. U-1, s. 30

48. Maternity Leave Regulations, R-069-88, s. 2

49. Employment Standards Act, RSBC, c.107, s. 82

50. Labour Standards Act, R.S.N.B., 1973, c. E-72, s. 42

51. Unemployment Insurance Act, s.30

52. Labour Standards Act, RSNWT 1974, c. L-1, s. 32.9

53. Labour Standards Act, RSS, 1978, c. L-1, s. 29.1

54. Canada Labour Code, RSC 1985, c. 9 (1st Supp), s. 206

55. Labour Standards Act, RSS, 1978, c. L-1, s. 29.1

56. Bill C-21. An Act to Amend the Unemployment Insurance Act, ss. 9 and 14, introduced in Parliament on 1 June 1989

57. Unemployment Insurance Act, s. 32

58. Bill C-21, s. 14

59. ibid., s. 9

60. See for example Labour Standards Act, RSS 1978, c. L-1, s. 29.2

61. Canada Labour Code RSC 1985, c. 9 (1st Supp) s. 206

62. ibid., s. 239

63. Unemployment Insurance Act, s. 29

64. Labour Standards Act, RSNWT 1974, c. L-1,s. 5

65. ibid., s. 7

66. Fair Practises Ordinance, ONWT 1966, c. 5, s. 6

67. Fair Practises Ordinace, RONWT 1974, c. F-1, s. 6

68. For a more complete discussion of these issues, see Beth Symes, Pay Equity: A Canadian Response to International Convention, National Association of Women and the Law, February, 1989.

69. United Nations International Convenant on Economic, Social and Cultural Rights, Article 7.

70. United Nations Convention on the Elimination of all Forms of Discrimination against Women, Article 11 (1)

71. Equality for Women: A Five Year Action Plan 1985-89, p.1

72. Charter of Human Rights and Freedoms, RSQ 1977, c.12, s. 19

73. Canadian Human Rights Act, RSC 1985, c. H-6, s. 11

74. Pay Equity Act, SO 1987, c. 34, s. 3

75. ibid., s. 10

76. ibid., s. 10

77. Labour Standards Act, RSNWT 1974, c. L-1 s. 13

78. Wages Recovery Act, RSNWT 1974, c. W-1, s. 5